

**PROPOSED REGULATION
OF
THE DIRECTOR OF THE OFFICE OF ENERGY
LCB File No. R125-11**

(revisions January 10, 2013)

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-27, NRS 701A.390.

A REGULATION relating to energy-related tax incentives; requiring the Director of the Office of Energy to assume the duties of the Nevada Energy Commissioner with respect to certain energy-related tax incentives; revising certain provisions which prescribe the process by which owners of certain facilities for the generation or transmission of electricity generated from renewable energy may apply to the Director for and receive a partial abatement of certain taxes; requiring the Director to provide an applicant with written notice of the release of certain confidential information; providing that the Director may expedite the date of a hearing to approve an application for a partial abatement of taxes under certain circumstances; requiring the Director to determine whether an applicant is in compliance with the terms of any distribution received from the Renewable Energy Fund under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 701A of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. “Construction of the facility” means any activity that is:*
 - (a) Related to the improvement of real property for which a project is designated; and*
 - (b) Essential for the generation of renewable energy.*
- 2. The term does not include:*
 - (a) Field development or preparatory work, including, without limitation, the installation of temporary fencing or exploratory wells, soil and pile testing, data system testing, surveying, grading and pad certification.*

(b) Any activity related to the maintenance, operation or security of a facility, including, without limitation, monitoring, inspecting and securing the facility.

Sec. 2. Section 2 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 2. As used in sections 2 to 36, inclusive, of this regulation, *and section 1 of LCB File No. R125-11*, the words and terms defined in NRS 701A.300 to 701A.345, inclusive, and sections 3 to 13, inclusive, of this regulation , *and section 1 of LCB File No. R125-11* have the meanings ascribed to them in those sections.

Sec. 3. Section 3 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 3. “Abatement agreement” means an agreement executed by the ~~[Commissioner]~~ *Director* and an applicant upon the issuance of a final decision by the ~~[Commissioner]~~ *Director* that the applicant is eligible for a partial abatement of taxes.

Sec. 4. Section 9 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 9. “Partial abatement of taxes” means an abatement of a portion of:

1. Local sales and use taxes;
2. The property taxes imposed pursuant to chapter 361 of NRS; or
3. Both local sales and use taxes and the property taxes imposed pursuant to chapter 361 of NRS,

↪ authorized by NRS 701A.360 and approved by the ~~[Commissioner]~~ *Director* in a final decision issued pursuant to section 22 of this regulation.

Sec. 5. Section 12 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 12. “Significant change” means a ~~[substantive]~~ *substantial* and material change in the size or scope of a project or facility from that described in an application and includes, without limitation:

1. A change of more than 10 percent in:
 - (a) The size or location of the land on which the project or facility is located;
 - (b) The size of a building or ancillary structure;
 - (c) The generating capacity of the facility or the output capacity for a facility for the generation of process heat from solar renewable energy;
 - (d) The estimated cost of any building or ancillary structure or other property to which the partial abatement of taxes would be applicable;
 - (e) The amount of the partial abatement of taxes which the applicant is seeking; and
 - (f) The ownership of or any ownership interest in the project or facility.
2. A *substantial and material* change in the schedule or ability to meet the time commitments established in the application.
3. Any similar ~~[substantive]~~ *substantial* and material change in the information upon which an applicant relies in establishing eligibility for a partial abatement of taxes.

Sec. 6. Section 14 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 14. ~~[1.]~~ To apply for a partial abatement of taxes, an applicant must submit electronically ~~[a pre-]~~ *an* application to the ~~[Commissioner]~~ *Director* on the form and in the manner prescribed by the ~~[Commissioner]~~.

~~—2.—The Commissioner will review each pre-application to make a preliminary determination of whether the applicant has provided information sufficient to demonstrate that the applicant is eligible for a partial abatement of taxes. In reviewing a pre-application, the Commissioner will assume that all information provided by the applicant is true and correct. The Commissioner may request such additional information from an applicant as the Commissioner determines is necessary. If a pre-application is~~

~~incomplete, the Commissioner will specify a reasonable amount of time within which the applicant must complete the pre-application. If the applicant does not complete the pre-application within the time specified by the Commissioner, the Commissioner will reject the pre-application.~~

~~—3.— The Commissioner will make a preliminary determination of an applicant's eligibility for a partial abatement of taxes and provide written notice of the preliminary determination to the applicant not later than 10 business days after the Commissioner receives a complete pre-application from the applicant. A preliminary determination made by the Commissioner is not a final decision regarding the eligibility of the applicant for a partial abatement of taxes.~~

~~—4.— If the Commissioner makes a preliminary determination that an applicant may be eligible for a partial abatement of taxes, the Commissioner will:~~

~~—(a) Provide to the applicant:~~

~~——(1) Written notice that the applicant may submit an application for a partial abatement of taxes; and~~

~~——(2) An application form; and~~

~~—(b) Provide to the governing body of each county, city or town in which the applicant's project or facility is located:~~

~~——(1) A copy of the pre-application submitted by the applicant; and~~

~~——(2) A copy of the notice provided to the applicant pursuant to subparagraph (1) of paragraph (a);~~

~~—5.— If the Commissioner makes a preliminary determination that an applicant is not eligible for a partial abatement of taxes, the Commissioner will provide to the applicant~~

~~written notice of the preliminary determination which must include each reason for rejecting the pre-application. An applicant whose pre-application has been rejected is not thereby precluded from submitting any new or amended pre-application pursuant to this section.~~

~~—6.—A pre-application for the construction of a facility that was commenced after July 1, 2009, may be submitted at any time, but at least 15 business days before submission of the application. After January 31, 2011, a pre-application must be submitted not later than 6 months before the applicant's anticipated first date of purchasing tangible personal property for the project.] *Director.*~~

Sec. 7. Section 16 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 16. 1. ~~[If the Commissioner provides notice to an applicant pursuant to subsection 4 of section 14 of this regulation that the applicant may submit an application for a partial abatement of taxes, the applicant must submit to the Commissioner electronically, on the form and in the manner prescribed by the Commissioner, a request for the assignment of an application filing number.]~~ The ~~[Commissioner]~~ *Director* will assign an application filing number to ~~[the]~~ *an* applicant not later than 2 business days after the ~~[Commissioner]~~ *Director* receives the ~~[request.]~~ *application of the applicant and will inform the applicant of the application filing number as soon as practicable.*

The application filing number must appear on all correspondence, applications and other documents *which relate to the application* submitted by the applicant to the ~~[Commissioner.]~~ *Director.*

2. ~~[If the applicant does not submit the application within 5 business days after the assignment of the application filing number, the application filing number expires and the~~

~~applicant must request a new application filing number from the Commissioner in the manner prescribed in subsection 1.~~

~~3.]~~ The application filing number of an application expires if the application is rejected by the Director.

3. Upon receipt of an application, the Director will review the application for timeliness and completeness. An application is timely filed if the Director receives a completed application not later than 6 months before the applicant's projected initial date to purchase any tangible personal property for the project or the projected first day of construction of the facility. If the Director determines that an application is not timely filed, the Director may reject the application if he or she determines that the application was filed in bad faith or that the timing of the filing frustrates the purposes of sections 2 to 36, inclusive, of this regulation, and section 1 of LCB File No. R125-11. If the Director rejects an application pursuant to this subsection, the Director will provide written notice of the rejection to the applicant. The Director is not required to expedite the processing of any application which is not timely filed. If the Director determines that an application is incomplete, the Director will provide written notice that the application is incomplete to the applicant and will identify in the notice those items which the Director has determined are incomplete. The applicant must provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director will reject the application and will provide written notice of the rejection to the applicant.

4. An applicant whose application has been rejected pursuant to subsection 3 may submit a new application.

5. The Director will provide a copy of the application to:

(a) The Chief of the Budget Division of the Department of Administration; and

(b) The Department of Taxation.

6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director will provide a copy of the application to:

(a) The board of county commissioners of each county in which the project or facility is located;

(b) The county assessor of each county in which the project or facility is located;

(c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;

(d) The governing body of each city or town in which the project or facility is located; and

(e) The Office of Economic Development.

7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.

Sec. 8. Section 18 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 18. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to an application which is submitted to the Director ~~for the Commissioner~~ and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the application is confidential and should be redacted and protected from publication, the applicant must:

(a) Submit with the original application a redacted copy of the application which clearly identifies each item in the application that the applicant believes is confidential and should be redacted and protected from publication; and

(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. ~~[The Director shall provide the Commissioner with the redacted copy of the application submitted pursuant to paragraph (a) of subsection 1 at the time that the Director provides a copy of the original application to the Commissioner.]~~ As soon as practicable after receipt of copies of the original and redacted applications, the ~~[Commissioner]~~ **Director** will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the application; and

(b) Provide the applicant with written notice regarding the ~~[Commissioner's]~~ **Director's** determination.

3. Not later than 3 business days after an applicant receives the written notice of the ~~[Commissioner's]~~ **Director's** determination made pursuant to subsection 2, the applicant shall indicate to the ~~[Commissioner]~~ **Director** in writing with respect to each item which the ~~[Commissioner]~~ **Director** has determined may not be redacted from the application:

(a) That the applicant consents to publication of the item; or

(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the ~~[Commissioner]~~

Director again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the ~~[Commissioner]~~ *Director* determines that one or more items in an application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in an application are confidential and must not be made public, the ~~[Commissioner]~~ *Director* will prepare a copy of the application from which the items that will not be made public have been redacted. The ~~[Commissioner will provide the redacted application to the Director as soon as practicable. Upon receipt of the redacted application from the Commissioner, the]~~ Director ~~[shall,]~~ *will*, as soon as practicable, provide a copy of the redacted application to:

- (a) The Chief of the Budget Division of the Department of Administration;
 - (b) The Department of Taxation;
 - (c) The board of county commissioners of each county in which the project or facility is located;
 - (d) The county assessor of each county in which the project or facility is located;
 - (e) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;
 - (f) The governing body of each city or town in which the project or facility is located;
- and
- (g) The ~~[Commissioner on]~~ *Office of* Economic Development.

5. If an applicant submits an application which the applicant believes contains information that is confidential and should be redacted and protected from publication:

(a) A recipient of a copy of the original application:

(1) Shall not make any portion of the original application public before the ~~{Commissioner}~~ *Director* has issued a written determination concerning the items which the applicant believes are confidential and should be redacted and protected from publication; and

(2) May make public only the information contained in the redacted application prepared by the ~~{Commissioner};~~ *Director*; and

(b) A recipient of a redacted application may make public only the information contained in the redacted application prepared by the ~~{Commissioner}~~ *Director*.

6. Any of the persons or governmental entities listed in subsection 4 may request in writing that the ~~{Commissioner}~~ *Director* additionally provide to the person or governmental entity any information which the ~~{Commissioner}~~ *Director* has determined is confidential. The ~~{Commissioner}~~ *Director* may, in his or her discretion, provide the requested information. If the ~~{Commissioner}~~ *Director* provides any such information, the person or governmental entity to whom he or she provides the information must limit access to and use of the information only to those people for whom such information is necessary in the performance of their duties . ~~{, and all such}~~ *The Director will provide written notice to an applicant of any confidential information provided pursuant to this subsection. Confidential* information provided pursuant to this subsection ~~{may}~~ *must* not be made public.

Sec. 9. Section 19 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 19. In preparing ~~the~~ a fiscal ~~notes required by~~ *note pursuant to* NRS 701A.375, the Chief of the Budget Division of the Department of Administration and the Department of Taxation shall ensure that:

1. Any information in the application which the ~~Commissioner~~ *Director* has determined is confidential and must be redacted and protected from publication be viewed and used only by those persons who must have access to the redacted information for the purpose of preparing the fiscal ~~notes;~~ *note;* and

2. The published fiscal note does not contain any information that the ~~Commissioner~~ *Director* has determined is confidential and must be redacted and protected from publication.

Sec. 10. Section 20 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 20. The ~~Commissioner~~ *Director* will not take any action regarding a requested partial abatement of property taxes pursuant to chapter 361 of NRS on an application submitted by an owner of a facility for the generation of electricity from geothermal resources unless the ~~Commissioner~~ *Director* receives written notice of approval of the application from the board of county commissioners of each county in which the facility is located. The ~~Commissioner~~ *Director* will process an application for a requested partial abatement of sales and use taxes pursuant to the provisions of sections 2 to 36, inclusive, of this regulation ~~[-]~~, *and section 1 of LCB File No. R125-11.*

Sec. 11. Section 22 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 22. 1. Upon receipt of the documents described in sections 19 ~~[-]~~ *and* 20 ~~and 21~~ of this regulation, the ~~Commissioner~~ *Director* will set a date for a hearing on an application. The ~~Commissioner~~ *Director* will provide notice of the hearing to:

- (a) ~~[(The Director;]~~
- ~~—(b)]~~ The Chief of the Budget Division of the Department of Administration;
- ~~[(c)]~~ (b) The Department of Taxation;
- ~~[(d)]~~ (c) The board of county commissioners of each county in which the project or facility is located;
- ~~[(e)]~~ (d) The county assessor of each county in which the project or facility is located;
- ~~[(f)]~~ (e) The county treasurer of each county in which the project or facility is located;
- ~~[(g)]~~ (f) The governing body of each city or town in which the project or facility is located;
- ~~[(h)]~~ (g) The ~~[(Commissioner)]~~ *Office of* Economic Development; and
- ~~[(i)]~~ (h) The applicant.

2. At a hearing conducted pursuant to this section, the applicant has the burden of proving by reasonable evidence that his or her application satisfies all the requirements for eligibility for a partial abatement of taxes.

3. At a hearing conducted pursuant to this section, the ~~[(Commissioner)]~~ *Director* or the ~~[(Commissioner's)]~~ *Director's* designee may ask questions of any witness.

4. If the ~~[(Commissioner)]~~ *Director* takes any action authorized by subsection 3 of NRS 701A.365, the ~~[(Commissioner)]~~ *Director* will do so at the hearing conducted pursuant to this section and will state on the record his or her reasons for so doing.

5. The ~~[(Commissioner)]~~ *Director* will issue findings of facts, conclusions of law and a final decision regarding an application not later than 10 business days after the date on which the hearing is concluded. The ~~[(Commissioner)]~~ *Director* may condition the approval of an application upon such terms as he or she determines are necessary. If the

~~[Commissioner]~~ *Director* determines that an applicant is eligible for a partial abatement of taxes, the ~~[Commissioner]~~ *Director* will execute an abatement agreement with the applicant as soon as practicable. The date on which the abatement agreement is executed by the ~~[Commissioner shall be considered]~~ *Director is* the date of the approval of the application for the purposes of NRS 701A.370.

Sec. 12. Section 23 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 23. 1. In addition to the applicant, any of the following persons or governmental entities may be a party to a hearing if the person or entity files a notice of intent to participate with the ~~[Commissioner:]~~ *Director:*

(a) ~~[The Director;~~

~~—(b)]~~ The Chief of the Budget Division of the Department of Administration;

~~[(e)]~~ (b) The Department of Taxation;

~~[(d)]~~ (c) The board of county commissioners of any county in which the project or facility is located;

~~[(e)]~~ (d) The county assessor of any county in which the project or facility is located;

~~[(f)]~~ (e) The county treasurer of any county in which the project or facility is located;

~~[(g)]~~ (f) The governing body of any city or town in which the project or facility is located; and

~~[(h)]~~ (g) The ~~[Commission-on]~~ *Office of* Economic Development.

2. A person or governmental entity described in paragraph (a), (b) ~~[(e) or (h)]~~ *or (g)* of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~[Commissioner]~~ *Director* and provide a copy of the notice to the applicant not later than 5 business days after the date on which notice of the hearing is

published. A person or governmental entity described in paragraph (c), (d), (e) ~~[(f)]~~ or ~~[(g)]~~ (f) of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the ~~[(Commissioner)]~~ Director and provide a copy of the notice to the applicant not later than 15 business days after the date on which notice of the hearing is published. The notice of intent to participate must include, without limitation:

- (a) A statement of whether the party intends to support or oppose all or any portion of the application;
- (b) The legal arguments in support of the party's position; and
- (c) The identification of any witnesses or evidence that the party intends to present in support of the party's position.

3. Except as otherwise provided in subsection 4, any person or governmental entity that files a notice of intent to participate may attend the hearing personally or may be represented at the hearing by an attorney, agent or other representative.

4. The ~~[(Commissioner)]~~ Director may require any person who files a notice of intent to participate to appear personally at the hearing if the ~~[(Commissioner)]~~ Director determines that the appearance will assist the ~~[(Commissioner)]~~ Director in determining whether the applicant is qualified for a partial abatement of taxes.

5. Except as otherwise provided by subsection 5 of NRS 701A.360, the Director may conduct a hearing within 15 days after notice of the hearing is published if each person and governmental entity described in subsection 1 waives in writing the right to the stated time by which to file a notice of intent to participate pursuant to subsection 2. Sec.

13. Section 24 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 24. 1. In determining whether an applicant has established that he or she has made the capital investment required by subparagraph (2) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (2) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~Commissioner~~ *Director* will consider:

(a) A capital investment to be any expenditure for an asset that qualifies as “section 1245 property,” as that term is defined in 26 U.S.C. § 1245, if the asset will be associated with and an integral part of the facility; and

(b) The amount paid for such an asset, including any capitalized interest, to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

2. In determining whether an applicant has satisfied the requirements of subparagraph (1) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (1) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~Commissioner~~ *Director* will consider an employee:

(a) To be a full-time employee working on ~~the~~ construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work ~~40~~ *an average of 40* or more hours per week *while* engaged in activity that furthers ~~the~~ construction of the facility. *If an employee works an average of less than 40 hours per week but more than 35 hours per week, the employee is to be considered a full-time employee and shall receive the same health benefits as a full-time employee.*

(b) To be a resident of Nevada if the applicant establishes that the employee possesses a current and valid Nevada driver’s license , ~~or~~ *or* a current and valid *state* identification card issued by the Department of Motor Vehicles. ~~or any other identifying documentation~~

~~which is approved by the Director.~~

3. In determining whether an applicant has satisfied the average hourly wage requirements of subparagraph (3) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (3) of paragraph (e) of subsection 1 of NRS 701A.365, the ~~Commissioner~~ *Director* will consider a person to be an employee of the facility if the applicant establishes that the person works on the site of the facility and is engaged in work that furthers the maintenance or operation of the facility. The ~~Commissioner~~ *Director* will consider an applicant to have satisfied those average hourly wage requirements if the applicant establishes that the average hourly wage paid to employees engaged in the maintenance and operation of the facility meets or exceeds 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined on a monthly basis and calculated as the total wages paid to all employees who performed maintenance and operation work on the facility for that month divided by the total number of hours worked by all employees who performed maintenance or operation work on the facility for that month, excluding management and administrative employees.

4. The ~~Commissioner~~ *Director* will consider an applicant to have satisfied the average hourly wage requirements of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365 if the applicant establishes that the average hourly wage paid to employees engaged in the construction of a project meets or exceeds 150 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and

Rehabilitation as determined ~~[on a weekly basis and calculated for each week during the construction period as]~~ *by dividing* the total wages paid to all employees who performed construction work on the project ~~[for that week divided]~~ *during the course of the construction period* by the total number of hours worked by all employees who performed construction work on the project ~~[for that week,]~~ *during the course of the construction period*, excluding management and administrative employees.

5. To establish that an applicant has satisfied the requirements of sub-subparagraph (II) of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or sub-subparagraph (II) of subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365, the applicant must establish *through certification by a third party, including, without limitation, a provider of healthcare or provider of insurance, or through other documentation which is approved by the Director*, that the ~~[cost of providing health insurance or a]~~ health insurance plan for an employee and the employee's dependents during the construction of the project includes, without limitation:

- (a) Emergency care . ~~[;]~~
- (b) Inpatient and outpatient hospital services . ~~[;]~~
- (c) Physicians' services . ~~[;]~~
- (d) Outpatient medical services . ~~[;]~~
- (e) Laboratory services . ~~[;]~~
- (f) Diagnostic testing services . ~~[; and]~~
- (g) ~~[For]~~ *Except as otherwise provided in this paragraph, for* an in-network provider, a minimum employer contribution of at least 80 percent of medical expenses after the employee's deductible limit is met. *The Director may approve a minimum employer*

contribution of less than 80 percent if an employer of a Nevada company with less than 10 employees submits a written request stating reasonable grounds for such an exception.

6. An applicant may satisfy the average hourly wage requirements in subsection 3 or 4 if the applicant's employees are paid:

- (a) The correct adjusted wage commencing on August 1 of each year; and
- (b) If the wage has been adjusted higher, an amount equivalent to the difference between the wage the employee was actually paid and the adjusted wage for all hours worked from July 1 through July 31. A payment made under this ~~subsection~~ *paragraph* must be made ~~before September 1 of each year.~~ *not later than 30 days after publication of the average statewide hourly wage by the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

7. *As used in this section:*

(a) *"Management and administrative employee" means:*

(1) An employee who is compensated on a salary or fee basis, including, without limitation, an employee who owns at least a 20 percent equity interest in the business and who is actively engaged in the management of such business, and who:

(I) Has the primary duty to manage the business or a department or subdivision of that business;

(II) Regularly directs the work of two or more other employees; and

(III) Has the authority to hire, fire, advance, promote or otherwise change the employment status of an employee; or

(2) An employee who is compensated on a salary or fee basis who:

(I) Has the primary duty to perform office or nonmanual work related to

general business operations or management for the employer or the customers of the employer; and

(II) Has the authority to exercise discretion and independent judgment with respect to matters of significance, including, without limitation, matters pertaining to accounting, finance, quality control, inspections, purchasing, compliance with applicable laws and regulations, human resources, advertising and public relations.; and

(III) Has the authority to hire, fire, advance, promote or otherwise change the employment status of an employee.

(b) “Provider of healthcare” means:

(1) A hospital; or

(2) A physician or dentist licensed pursuant to chapter 630, 631 or 633 of NRS.

(c) “Provider of insurance” has the meaning ascribed to it in NRS 679A.118.

Sec. 14. Section 25 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 25. 1. If the ~~Commissioner~~ *Director* issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of taxes, the final decision must include:

(a) The terms of the partial abatement of taxes;

(b) A certificate of eligibility; and

(c) A copy of the abatement agreement executed by the ~~Commissioner~~ *Director* and the applicant.

2. A partial abatement of taxes approved by the ~~Commissioner~~ *Director* is prospective only and must not be applied retroactively to any tax imposed before the execution of the abatement agreement between the ~~Commissioner~~ *Director* and the

applicant.

Sec. 15. Section 26 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 26. 1. If the ~~{Commissioner}~~ *Director* issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of sales and use taxes, unless the certificate of eligibility and abatement agreement otherwise provide, the following tangible property which will be used exclusively for the construction, operation or maintenance of the facility qualifies for the partial abatement of sales and use taxes:

(a) Materials for any building that will be located on the site of the facility, including, without limitation, residential structures if employees at the facility will be required to reside at the site of the facility;

(b) Equipment, fixtures or furniture needed and used on the site of the facility;

(c) Materials for any road, parking lot or other structure that is not a building which will be located on the site of the facility;

(d) Materials to provide water, fuel or electrical power necessary for the facility, including, without limitation, the costs inherent in tie lines and transmission lines;

(e) Equipment, fixtures or other tangible items necessary for the generation of power on the site of the facility;

(f) Motor vehicles, if the motor vehicles are specifically purchased *or leased* for exclusive use on the site of the facility;

(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically ~~{purchased}~~ :

(1) Purchased for exclusive use on the site of the facility and will remain on the site of the facility throughout the ~~[construction of the project and]~~ operation of the facility;
or

(2) Leased for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project or operation of the facility;

- (h) Mobile housing or office units, if the units will be located at the site of the facility throughout the construction of the project and operation of the facility;
- (i) Materials, equipment, fixtures, components or other tangible items located at the site of the facility and necessary for the construction and operation of a facility for the transmission of electricity; and
- (j) Materials for any road required for access along the site of a facility for the transmission of electricity that is specifically purchased for exclusive use on such roads.

2. If an applicant seeks a partial abatement of sales and use taxes for any tangible property other than the property described in subsection 1, the applicant's application must specifically include a request that the ~~[Commissioner]~~ *Director* determine whether the property for which the partial abatement is requested qualifies for the partial abatement of sales and use taxes. The ~~[Commissioner shall]~~ *Director will* consult with the Department of Taxation before making any determination on an applicant's request under this subsection. If the application includes a request pursuant to this subsection, the ~~[Commissioner's]~~ *Director's* final decision must include a determination of whether the property qualifies for the partial abatement of sales and use taxes.

Sec. 16. Section 27 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 27. If the ~~[Commissioner]~~ *Director* issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial

abatement of the property taxes imposed pursuant to chapter 361 of NRS, unless the certificate of eligibility and abatement agreement otherwise provide, all real and personal property that would be taxable pursuant to chapter 361 of NRS that was purchased or leased specifically for exclusive use on the site of the facility qualifies for the partial abatement of property taxes.

Sec. 17. Section 28 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 28. 1. An applicant who has executed an abatement agreement with the ~~Commissioner~~ *Director* shall:

(a) Maintain a list of the names and contact information of each person, entity, contractor and subcontractor working on the construction of the project and operation of the facility who is authorized to claim the benefit of the partial abatement of taxes approved by the ~~Commissioner~~ *Director*;

(b) Ensure that the information contained in the list maintained pursuant to paragraph (a) is complete, current and accurate;

(c) Ensure that the list maintained pursuant to paragraph (a) is available for inspection by the authorized employees or agents of the ~~Commissioner~~ *Director*, the Department of Taxation, any county in which the facility is located and vendors during normal business hours; and

(d) Ensure that each person, entity, contractor or subcontractor who is named on the list maintained pursuant to paragraph (a) complies with the terms of the abatement agreement.

2. If the applicant or any other person, entity, contractor or subcontractor fails to comply with the terms of the abatement agreement, the applicant shall pay to the State of

Nevada the amount of any sales and use taxes and the amount of any property taxes abated resulting from the noncompliance.

Sec. 18. Section 29 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 29. 1. Each applicant who executes an abatement agreement with the ~~[Commissioner]~~ *Director* shall file an annual compliance report with the Director on the form prescribed by the ~~[Commissioner]~~ *Director*. The applicant shall file the annual compliance report on or before the anniversary date of the abatement agreement. The annual compliance report must include all information and documentation required by the ~~[Commissioner]~~ *Director*.

2. ~~[The Director shall provide a copy of each annual compliance report filed pursuant to this section to the Commissioner as soon as practicable.]~~

~~—3.]~~ The ~~[Commissioner]~~ *Director* will review each annual compliance report as soon as practicable after receipt of the annual compliance report from the ~~[Director]~~ *applicant*.

An annual compliance report which is incomplete will be rejected and shall be deemed not to have been filed. If the ~~[Commissioner]~~ *Director* determines that additional information is required to determine whether the applicant is in compliance with the terms of the abatement agreement, the ~~[Commissioner]~~ *Director* may request additional information from the applicant.

~~[4.]~~ 3. If the ~~[Commissioner]~~ *Director* determines that the annual compliance report and any additional information requested by the ~~[Commissioner]~~ *Director* establish that the applicant is in compliance with the terms of the abatement agreement, the ~~[Commissioner]~~ *Director* will notify the applicant of the determination in writing and provide a copy of the notice to:

- (a) The Department of Taxation;
- (b) The board of county commissioners of each county in which the project or facility is located;
- (c) The county assessor of each county in which the project or facility is located; and
- (d) The county treasurer of each county in which the project or facility is located.

Sec. 19. Section 30 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 30. 1. If, at any time or for any reason, the ~~Commissioner~~ *Director* determines that an applicant has ceased to meet any eligibility requirement for a partial abatement of taxes or that the applicant or any other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the ~~Commissioner~~ *Director* will notify the applicant in writing of the determination. The notice must include, without limitation:

- (a) A statement of the facts upon which the determination is based;
- (b) Identification of the provisions of NRS 701A.300 to 701A.390, inclusive, or sections 2 to 36, inclusive, of this regulation, *and section 1 of LCB File No. R125-11*, or the terms of the abatement agreement with which the applicant or other person, entity, contractor or subcontractor is not in compliance;
- (c) A time by which the applicant must respond to the ~~Commissioner~~ *Director* in writing;
- (d) A time by which the applicant must remedy the noncompliance identified by the ~~Commissioner;~~ *Director;*
- (e) A statement that the applicant may request a hearing before the ~~Commissioner;~~ *Director;* and

(f) Any other information that the ~~{Commissioner}~~ *Director* believes will aid the applicant in remedying the noncompliance identified by the ~~{Commissioner.}~~ *Director.*

2. If an applicant requests a hearing pursuant to this section, the ~~{Commissioner}~~ *Director* will set a date, time and place for the hearing and will provide written notice of the hearing to the applicant. The ~~{Commissioner}~~ *Director* will issue written findings of fact, conclusions of law and an order after the conclusion of the hearing.

3. If, after a hearing conducted pursuant to this section and a reasonable opportunity to remedy any noncompliance, the ~~{Commissioner}~~ *Director* determines that the applicant has ceased to meet the eligibility requirements for a partial abatement of taxes or that the applicant or other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the ~~{Commissioner}~~ *Director* will immediately:

(a) Terminate the partial abatement of taxes; and

(b) In addition to the notice requirement of subsection 3 of NRS 701A.380, provide notice of the termination to:

(1) ~~{The Director;~~

~~—(2)}~~ (2) The Chief of the Budget Division of the Department of Administration;

~~{(3)}~~ (3) The Department of Taxation;

~~{(4)}~~ (4) The board of county commissioners of each county in which the project or facility is located;

~~{(5)}~~ (5) The county assessor of each county in which the project or facility is located;

~~[(6)]~~ (5) The county treasurer of each county in which the project or facility is located;

~~[(7)]~~ (6) The governing body of each city or town in which the project or facility is located;

~~[(8)]~~ (7) The ~~[Commission on]~~ *Office of* Economic Development; and

~~[(9)]~~ (8) The applicant.

4. The ~~[Commissioner]~~ *Director* or his or her designee may conduct an on-site inspection of the project or facility and the applicant at any time to determine if the applicant is in compliance with the abatement agreement.

5. The ~~[Commissioner]~~ *Director* or his or her designee, upon a request of the board of county commissioners of any county or governing body of any city or town in which the project or facility is located, ~~[may]~~ *will* conduct an on-site inspection of the project or facility or audit of the applicant to determine if the applicant is in compliance with the abatement agreement ~~[.]~~ *and the terms of any distribution or funding received from the Renewable Energy Fund pursuant to NRS 701A.450.*

Sec. 20. Section 31 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 31. 1. If the ~~[Commissioner]~~ *Director* determines that a project or facility is not in compliance with the abatement agreement ~~[.]~~ *pursuant to section 30 of this regulation,* the applicant shall ~~[pay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated during the period in which the project or facility was not in compliance with the abatement agreement.~~

~~—2.—Payment to the State of Nevada must be made within 60 days after the date of the written notice from the Commissioner to the applicant that payment is due. If the~~

~~applicant fails timely to pay the amount of the abated taxes, the abated taxes bear interest at the rate of interest most recently established pursuant to NRS 99.040 calculated as starting on the effective date of the abatement agreement.~~

~~—3.— Any amounts paid to the State of Nevada to recoup abated local sales and use taxes and property taxes must be paid by the State of Nevada to the appropriate local agency. If the State of Nevada recovers any interest, the payment to the appropriate local agency must include an apportioned share of the interest recovered.~~

~~—4.] repay pursuant to NRS 701A.380 any abated taxes owed to the State or any political subdivision of the State not later than 60 days after receiving written notice pursuant to subsection 3 of section 30 of this regulation.~~

2. The ~~[Commissioner]~~ *Director* may take any action which is authorized by law and which he or she believes is reasonably necessary to enforce the provisions of this section.

Sec. 21. Section 32 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 32. The ~~[Commissioner]~~ *Director* may require that any ~~[pre-application,]~~ application, amendment, annual report or other document submitted to the ~~[Commissioner]~~ *Director* be attested to by the owner.

Sec. 22. Section 33 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 33. 1. If an ~~[owner]~~ *applicant* intends to sell, assign or otherwise transfer all or some of the ~~[owner's]~~ interest *of the applicant* in the project or facility, the ~~[owner]~~ *applicant* must:

(a) If the sale, assignment or other transfer will occur before the hearing regarding the ~~[owner's]~~ application ~~[,]~~ *of the applicant*, amend the application to include information

regarding the proposed successor in interest and the terms and conditions of the transaction.

(b) If the sale, assignment or other transfer will occur after the execution of an abatement agreement, provide written proof that the successor in interest has actual knowledge of and will fully comply with the abatement agreement.

2. Upon receipt of any of the information required by subsection 1, the ~~{Commissioner}~~ *Director* will provide a copy of the information to:

- (a) ~~{The Director};~~
- ~~—(b)}~~ The Chief of the Budget Division of the Department of Administration;
- ~~{(e)}~~ (b) The Department of Taxation;
- ~~{(d)}~~ (c) The board of county commissioners of any county in which the project or facility is located;
- ~~{(e)}~~ (d) The county assessor of any county in which the project or facility is located;
- ~~{(f)}~~ (e) The county treasurer of any county in which the project or facility is located;
- ~~{(g)}~~ (f) The governing body of any city or town in which the project or facility is located; and
- ~~{(h)}~~ (g) The ~~{Commission-on}~~ *Office of* Economic Development.

3. A successor in interest to an ~~{owner}~~ *applicant* is not eligible for or entitled to a partial abatement of taxes authorized by an abatement agreement executed pursuant to sections 2 to 36, inclusive, of this regulation , *and section 1 of LCB File No. R125-11,* until the ~~{Commissioner}~~ *Director* has received all the information required by subsection 1.

Sec. 23. Section 34 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 34. 1. ~~[On or before the second Monday of March, June, September and December of each year, the]~~ *The* State Controller shall , *as soon as practicable*, deposit all money in his or her possession that is subject to the provisions of NRS 701A.450 into the Renewable Energy Fund in such an account or accounts as directed by the ~~[Commissioner.]~~ *Director*. All money received by the ~~[Commissioner.]~~ *Director* from the State Controller pursuant to NRS 701A.450 must be deposited by the ~~[Commissioner.]~~ *Director* into one or more interest-bearing accounts in financial institutions located in Nevada. All records related to the account or accounts are public records and must be maintained ~~[in the Office of]~~ *by* the ~~[Commissioner.]~~ *Director*.

2. At least ~~[annually,]~~ *every odd-numbered year*, the ~~[Commissioner.]~~ *Director* will have the account or accounts audited by an independent auditor, and any report made by the auditor is a public record and must be maintained ~~[in the Office of]~~ *by* the ~~[Commissioner.]~~ *Director*.

3. ~~[On or before June 30 of each year, the Commissioner]~~ *The Director* will disburse from the account or accounts all of the money contained therein as follows:

(a) Seventy-five percent must be available to ~~[be used by the Public Utilities Commission of Nevada to]~~ offset the cost of electricity to retail customers *of a public utility* pursuant to subsection 4 of NRS 701A.450; and

(b) Twenty-five percent must be dedicated solely to be used by the ~~[Commissioner]~~ *Director* for the operation and staffing of his or her office and for purposes related to the ~~[Commissioner's]~~ *Director's* duties and obligations pursuant to chapters 701 and 701A of NRS and sections 2 to 36, inclusive, of this regulation ~~[.]~~ , *and section 1 of LCB File No. R125-11.*

Sec. 24. Section 35 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 35. 1. An interested person who wishes to petition the ~~{Commissioner}~~ *Director* for the adoption, filing, amendment or repeal of a regulation in this chapter must file with the ~~{Commissioner}~~ *Director* the original and one copy of the petition.

2. The petition must include:

- (a) The name and address of the petitioner;
- (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
- (c) The reason for the adoption, filing, amendment or repeal of the regulation; and
- (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The ~~{Commissioner}~~ *Director* may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if:

- (a) The original petition is not accompanied by one copy of the petition; or
- (b) The petition does not contain the information required by subsection 2.

4. The ~~{Commissioner}~~ *Director* will notify the petitioner in writing of his or her decision within 30 days after the petition is filed.

Sec. 25. Section 36 of LCB File No. R094-10 is hereby amended to read as follows:

Sec. 36. 1. Except as otherwise provided in subsection 4, an interested person may petition the ~~{Commissioner}~~ *Director* to issue a declaratory order or advisory opinion concerning the applicability of a statute or regulation within the ~~{Commissioner's}~~ *Director's* purview or jurisdiction. The original and one copy of the petition must be filed with the ~~{Commissioner.}~~ *Director.*

2. The petition must include:
 - (a) The name and address of the petitioner;
 - (b) The reason for requesting the order or opinion;
 - (c) A statement of facts that support the petition; and
 - (d) A clear and concise statement of the question to be decided by the ~~Commissioner~~ *Director* and the relief sought by the petitioner.
3. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.
4. The ~~Commissioner~~ *Director* may refuse to review a petition which requests that he or she issue a declaratory order or advisory opinion if:
 - (a) The original petition is not accompanied by one copy of the petition;
 - (b) The petition does not contain the information required by subsection 2; or
 - (c) The petition seeks a declaratory order or an advisory opinion prohibited by subsection 3.
5. The ~~Commissioner~~ *Director* may:
 - (a) Conduct an informal hearing to determine issues of fact or to hear arguments relating to the petition and may enter reasonable orders that govern the conduct of such a hearing.
 - (b) Request that the petitioner provide additional information or arguments relating to the petition.
 - (c) Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.

(d) Consider relevant decisions that have been issued by the ~~[Commissioner]~~ *Director* which apply or interpret the statute, regulation or decision in question.

(e) Enter any reasonable order to assist his or her review of the petition.

6. The ~~[Commissioner]~~ *Director* will maintain a record of the order or opinion that is indexed by subject matter and mail a copy of the order or opinion to the petitioner within 60 days after:

(a) The petition is filed;

(b) An informal hearing is conducted; or

(c) Any additional information or written argument is received by the ~~[Commissioner,]~~ *Director,*

→ whichever occurs later.

7. The ~~[Commissioner]~~ *Director* will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the staff of the ~~[Commissioner]~~ *Director* is not a decision or an advisory opinion of the ~~[Commissioner.]~~ *Director.*

Sec. 26. Sections 10, 15, 17 and 21 of LCB File No. R094-10 are hereby repealed.

Sec. 27. The provisions of section 1 of this regulation and sections 2 to 36, inclusive, of LCB File No. R094-10, as amended by this regulation, do not apply to any application which is submitted to the Director for approval before *January 15, 2013* .

TEXT OF REPEALED SECTIONS

Section 10 of LCB File No. R094-10:

Sec. 10. “Pre-application” means a proposal submitted pursuant to section 14 of this regulation and includes, without limitation, the completed pre-application form and all supporting documents.

Section 15 of LCB File No. R094-10:

Sec. 15. 1. In accordance with the provisions of chapter 239 of NRS, all information relating to a pre-application which is submitted to the Commissioner and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the pre-application is confidential and should be redacted and protected from publication, the applicant must:

(a) Submit with the original pre-application a redacted copy of the pre-application which clearly identifies each item in the pre-application that the applicant believes is confidential and should be redacted and protected from publication; and

(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.

2. As soon as practicable after receipt of the original and redacted pre-applications, the Commissioner will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:

- (a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the pre-application; and
- (b) Provide the applicant with written notice regarding the Commissioner's determination.

3. Not later than 3 business days after an applicant receives the written notice of the Commissioner's determination made pursuant to subsection 2, the applicant shall indicate to the Commissioner in writing with respect to each item which the Commissioner has determined may not be redacted from the pre-application:

- (a) That the applicant consents to publication of the item; or
- (b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the Commissioner again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the pre-application or seek an order from a court of competent jurisdiction protecting the item from publication.

4. If the Commissioner determines that one or more items in a pre-application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in a pre-application are confidential and must not be made public, the Commissioner will prepare a copy of the pre-application from which the items that will not be made public have been redacted. The Commissioner will make public only the redacted pre-application.

Section 17 of LCB File No. R094-10:

Sec. 17. 1. An applicant who has received written notice from the Commissioner that the applicant may submit an application for a partial abatement of taxes must submit electronically a complete application to the Director on the form provided by the Commissioner and in the manner prescribed by the Director and the Commissioner.

2. The application must be submitted not later than 5 business days after the applicant receives an application filing number pursuant to section 16 of this regulation.

3. Not later than 5 business days after receipt of an application, the Director shall review the application for timeliness and completeness. If the Director determines that an application is not timely filed, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner. For the purpose of determining whether an application is timely filed, the date on which the Director determines the application to be complete shall be deemed to be the date of receipt of the application. If the Director determines that an application is incomplete, the Director shall provide written notice that the application is incomplete to the applicant and the Commissioner and shall identify in the notice those items which the Director has determined are incomplete. The applicant shall provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner.

4. An applicant whose application has been rejected pursuant to subsection 3 may request a new application filing number from the Commissioner and submit a new application.

5. The Director shall provide a copy of the application to:

- (a) The Commissioner;
- (b) The Chief of the Budget Division of the Department of Administration; and
- (c) The Department of Taxation.

6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director shall provide a copy of the application to:

- (a) The board of county commissioners of each county in which the project or facility is located;
- (b) The county assessor of each county in which the project or facility is located;
- (c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;
- (d) The governing body of each city or town in which the project or facility is located; and
- (e) The Commission on Economic Development.

7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.

Section 21 of LCB File No. R094-10:

Sec. 21. Upon receipt of the fiscal notes prepared pursuant to NRS 701A.375 and, if required by NRS 701A.365, the written notice of approval of an application from the board of county commissioners of each county in which the facility is located, the Director shall provide the documents to the Commissioner within 2 business days.